

# Life of Beauchesne

## III. Beauchesne and the Constitution

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*After nearly fifteen years in the journalistic and political wars in the province of Quebec (see previous issues) Beauchesne moved to Ottawa in 1913 to take up a position in the Department of Justice. In 1916 he was appointed Clerk Assistant of the House of Commons and became Clerk in 1925. He held this position until 1949. Appointment to high office did not stop Beauchesne from speaking his mind on a wide variety of political issues including the question of amending and patriating the Canadian constitution.*

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In traditional Chinese society privileged and powerful Imperial officials were known as mandarins. The term is used today to designate certain influential civil servants who advise political decision-makers. A recent study examined the lives of O.D. Skelton, Clifford Clark, Graham Towers and sixteen other Ottawa mandarins who, from 1924 to 1957, "made the Canadian public service a model of policy innovation and efficiency — conceivably the very best in the western world."<sup>1</sup> Nowhere does the name of Arthur Beauchesne appear.

By virtue of his position and accomplishments Beauchesne would seem to have merited attention although the traditional Canadian mandarin was, like that of Imperial China, drawn from a very narrow segment of society. Mandarins were overwhelmingly English and protestant with more or less strong ties to the Liberal Party and Keynesian economic policy. They worked mainly for a few key government departments such as External Affairs, the Bank of Canada, the Department of Finance and the

Privy Council Office. They were policy-oriented with expertise essential to the efficient conduct of government. "Did anyone believe that a harried cabinet minister beset on every side by difficulties and facing election after election was going to become an expert in foreign policy or agriculture or railways simply by virtue of taking the oath of office? Experts were essential to the government whatever its policies."<sup>2</sup>

Beauchesne's expertise in parliamentary matters was beyond question but his French-Canadian origins and his Conservative background distinguished him from those who held the greatest power in the Ottawa bureaucracy of his day. Mandarins also excel in the exercise of patience and tact. They do not engage politicians or even fellow mandarins in public debate. Beauchesne loved controversy and debate, particularly if he was in the middle of it.

A typical example of his outspokenness occurred in 1935 when a Special Parliamentary Committee was established to consider the problem of amending the *British North America Act*. The committee called seven expert witnesses including Professors Frank Scott, Norman McLeod Rogers and W.P.M. Kennedy; Deputy Minister of Justice W.S. Edwards; Law Clerk of the House of Commons Maurice Ollivier and Under Secretary of State for

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*Note: Some quotes have been translated or summarized. For the original French text see this issue of the Revue parlementaire canadienne.*

External Affairs O.D. Skelton. The seventh witness was Beauchesne.

Skelton, considered by many to be the first and quintessential mandarin, gave a learned presentation on how previous amendments had been passed and on the methods used in certain other federations. He then gave three options for consideration by the committee for future amendments: intergovernmental agreement between Ottawa and the provinces; holding of referenda with votes counted by province; or by resolution passed by Parliament and a majority of provincial legislatures. Skelton favoured the latter since agreement by the Senate, the House of Commons and five or six of the nine provinces would be sure "to express a clearly felt national need". He also thought that sections of the constitution regarding minority rights should require unanimous agreement. (This is essentially the formula eventually adopted forty-five years later).

Beauchesne's testimony proved to be more provocative. He said the old constitution should simply be scrapped. "The time has come, in my humble opinion, when the *British North America Act*, except as to minority rights, should be transformed and a new constitution more in conformity with present conditions should be adopted. Amendments here and there would be mere patchwork which could not last. The people of 1935 are different from those of 1876. What we want is a new constitution."<sup>3</sup>

The creation of a new constitution would be entrusted to an independent body composed of all elements of the nation. "I submit that a Constituent Assembly, chosen by the provincial legislatures and by the House of Commons, representing the main political parties and groups in proportion to the votes given at the last general elections, should meet ... and discuss the constitution from all its angles."<sup>4</sup> The debate should be public for he felt intergovernmental conferences behind closed doors would never satisfy public opinion.

After referring to American and French experience with constituent assemblies Beauchesne suggested that in the case of Canada the federal and provincial Prime Ministers and Leaders of the Opposition would form an executive committee to organize the agenda but there ought to be no government side and no official opposition in such a body. The members would take up systematically every constitutional question that has been discussed over the past few decades. For instance, the question of reducing the number of provinces, the electing of senators, the question of fisheries, the *Companies Act*, insurance law, etc., could all then be considered. Decisions would be taken by a majority vote of the constituent assembly but before a new constitution could come into force it would have to be approved by the Dominion and each province as well as by Great Britain.

Under questioning from Ernest Lapointe about the relative powers envisaged for the federal and provincial governments in a new constitution, Beauchesne replied:

It is not absolutely necessary that the same powers be given to each province. Suppose you have a province, for instance, in the west, which claims that it cannot afford to manage all its social legislation. What prevents it from giving part of it to the Dominion, provided there is some compensation given for it. If the Dominion manages some of the province's affairs it should get revenue or should be compensated for it. But I think these things should be settled by each province and each province should be an independent country with power to do whatever it pleases. And I would have no appeal, no veto, and no remedial appeal, none of all that misery we have had here since Confederation; and each province would own its own courts.<sup>5</sup>

Beauchesne made it a practice to send copies of his speeches to a number of friends, former parliamentarians, journalists and in French and English Canada as well as abroad. His advocacy of a constituent assembly failed to gain much support except from one Social Credit backbencher, Walter Kuhl, who referred to it as the "Beauchesne Plan" whenever he spoke about the constitution in the House over the next decade.<sup>6</sup>

English language newspapers tended to concentrate on other aspects of his speech such as the idea for a National Capital Region extending 25 miles on both sides of the Ottawa River and a National Park to the north of the city.<sup>7</sup> From Quebec's point of view the main problem with a constituent assembly was that it would put the future of the constitution in the hands of a group in which French Canadians would be a minority. This point was made most succinctly by Dollard Dansereau in the nationalist newspaper *L'Ordre* owned by Olivar Asselin.

Beauchesne wrote to his former colleague to complain about the way Dansereau took his comments out of context in a deliberate attempt to make him look foolish. Beauchesne said he was well aware of the imminent financial demise of the newspaper but hoped that even in its death throes it would not stoop to calling him anti-French-Canadian.<sup>8</sup>

Beauchesne never changed his mind about the need for radical constitutional reform. In 1944 he told a Saskatchewan barrister that "I have long been of the opinion that the B.N.A. Act has served its purpose and should be repealed. It cannot cope with existing conditions and we have evidence in this conscription muddle that it is a source of disunion."<sup>9</sup> Ten years later he was still advocating a constituent assembly.

Some of the provinces are living beyond their means and economic legislation is more difficult of introduction in Canada than in any other country in the world on account of our dual system of government.

There is more reason today to revise our Constitution than nineteen years ago when a select House of Commons Committee looked into the matter. Besides the direct taxation tug-of-war which is now creating animosities, the Constituent Assembly could take up appointments to the Senate, the flag question, transportation, radio, film services, the scope of civil rights, the establishment of a Federal District, the procedure required to amend our own Constitution, and many other less important matters. We have outgrown the *British North America Act*.<sup>10</sup>

## Notes

<sup>1</sup>J.L. Granatstein, *The Ottawa Men: The Civil Servant Mandarins 1935-1957*, Oxford University Press, Toronto, 1982, p. 18.

<sup>2</sup>*Ibid.*, p. 24.

<sup>3</sup>Canada, House of Commons, Special Committee on the *British North America Act*, *Proceedings and Evidence and Report* King's Printer, 1935), p. 125.

<sup>4</sup>*Ibid.*, p. 126.

<sup>5</sup>*Ibid.*, p. 134.

<sup>6</sup>See for example Canada, House of Commons, *Debates*, February 10, 1938, pp. 346-347; March 9, 1939, p. 1180; May 3, 1939, pp. 3518-3520; July 3, 1944, pp. 4476-4477; November 9, 1944, pp. 1944-1945; and June 20, 1946, pp. 2665-2666.

<sup>7</sup>See the *Ottawa Journal* April 17, 1985 and the *Ottawa Citizen* April 17, 1985.

<sup>8</sup>Public Archives of Canada, Beauchesne to Asselin, April 25, 1935.

<sup>9</sup>PAC, *Beauchesne Papers*, Beauchesne to George Barr, November 27, 1944.

<sup>10</sup>*The Gazette*, April 9, 1954.